

or acknowledgment for his right, ought to bar the present claim. 3d. By the practice of the Court of Session, the utmost weight is always laid on uninterrupted possession, and upon the long silence or non-claim of those who dispute the right of the proprietor; and it is of the utmost importance to the rights of a *bona fide* purchaser, that such effect should be so given to a title so possessed.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors therein complained of be affirmed.

For the Appellants, *Sir J. Scott, M. Nolan.*

For the Respondents, *Wm. Tait, Mat. Ross, A. Campbell, J. Campbell.*

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v.
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ISOBEL DUNCAN, residing at Scone, a Pauper, *Appellant;*
JAMES RITCHIE, of Hoil of Scone, . . *Respondent.*

House of Lords, 2d April 1798.

REDUCTION OF SALE—FACILITY, FRAUD, AND CIRCUMVENTION—

BO NA FIDE PURCHASER.—Circumstances where a sale of property was sought to be reduced on the head of facility in the granter, and lesion and circumvention in the grantee. Held the proof, which was conflicting, not sufficient to set aside the sale of the property in the hands of a *bona fide* purchaser from the party who was charged with the fraud.

The appellant's father, George Duncan, had, previous to his death, sold a small property to Robert Thomson, which was afterwards purchased by the respondent from him, for an adequate price paid.

After George Duncan's death, his daughter refused to remove from the property, which compelled the respondent to raise an action of removing before the sheriff; and the appellant, on her part, brought an action of reduction to set aside the conveyance by her father to Thomson, on the following grounds:—1. Facility in the granter of the disposition 1784. 2. Lesion and circumvention on the part of the grantee.

The Lord Ordinary allowed a proof; and, besides the proof, it appeared that the disposition was signed by the granter, George Duncan, on the first page, thus: "Gancan Garg Duincan;" on the second page, it was "Georg Duncan;" on

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the third page, it was “Georg Ducan;” and on the fourth, “Georg Duncan.”

On the proof, the respondent maintained, 1. That the facility and incapacity of George Duncan were not established. The appellant had stated, “that the natural imbecility of George Duncan’s mind was increased by age and habits of intoxication;” but even if this were established by the proof, it would not avail her; because it would be too vague and indefinite to support the conclusions of the summons. The proof, when examined, he contended, did not even amount to this. The greater number of the witnesses, with the exception of one or two, spoke distinctly to his fitness in body and mind to take charge of his own affairs, and to transact business. One alone declared he was weak in body and mind. Another, that he could not be imposed upon except in drink. And many declared that he had the ordinary capacity at the time of the sale to transact business, and enter into a bargain regarding the sale of his feu. 2. As to lesion and circumvention, it was maintained that there was no proof of it. There was no inequality in the price—a full price having been given; and there was no deceit practised. 3. The respondent further rested his defence on this general plea. That as the reduction was founded on the fraud of Robert Thomson, this was not a ground of challenge which could affect *him*, a *bona fide* purchaser from Thomson.

The Lord Ordinary having reported the case to the Court, July 19, 1796. the Lords at first sustained the reasons of reduction, and reduced and decerned; but, upon reclaiming petition and Feb. 14, — answers, they altered this interlocutor, and “repel the reasons of reduction, assoilzie the defender, and decern, but “find no expenses due.” In the action of removing, which was removed to the Court of Session, they also decerned the Mar. 1, 1797. appellant to remove from the subjects. And, upon bill of suspension against these decrees, the bill was refused by Lord Cullen.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—By the law of Scotland, facility in either of the contracting parties, when coupled with lesion in the matter of the transaction itself, is a relevant ground for voiding an agreement of sale. In the present case, these grounds of challenge have been established, not only by direct parole testimony, but by intrinsic evi-

dence, arising from the circumstances of the transaction itself. The respondent contends that the facility of the granter is not sufficiently made out, but, on a fair and impartial view of the import of the conflicting testimonies in this case, the weight of evidence is due to the appellant's witnesses, because they seem to be those who were better acquainted with his habits of life, and had more opportunities of judging of his capacity or incapacity. The signature too adhibited to the deed in question, which varies in its appearance and mode of spelling at the bottom of every page, is a circumstance of real evidence which leads to the same conclusion.

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Pleaded for the Respondent.—The respondent is a *bona fide* purchaser from Robert Thomson, and the reasons of reduction are only personal to him. 2. Even as against Robert Thomson, the grounds of reduction have, not only *not* been established, but have been completely disproved.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be affirmed.

For Appellant, *Wm. Adam, W. Erskine.*

For Respondent, *Sir J. Scott.*

Writ of Error.

MESSRS. EASTON, FRAZER, and Co., Licensed Distillers at the Bridge of Don, in the County of Aberdeen,	}	<i>Plaintiffs in Error;</i>
GEORGE BROWN and Others, Commissioners of Excise for Scotland,	}	<i>Defendants in Error.</i>

House of Lords, 3d April 1798.

DISTILLERY LAWS—DRAWBACK—WORKING ON SUNDAYS ILLEGAL.

—In a claim made by distillers in Scotland for a drawback on duty allowed for spirits distilled for exportation to England. Held, that by the words of the acts allowing the abatement “for every day” the still should work, did not include Sunday, though the distillers worked the stills on Sabbaths, it being a profanation of the laws with regard to the Sabbath, which hold it illegal to work on that day, and therefore that they could not claim a drawback on the duty for spirits made and distilled on that day.

This was a claim made by the plaintiffs in the Court of Exchequer for certain drawbacks under the distillery acts,